United Nations A/65/588 S/2010/599

General Assembly
Security Council

Distr.: General
24 November 2010

Original: English

General Assembly
Sixty-fifth session
Agenda item 126
International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Security Council
Sixty-fifth year

Identical letters dated 23 November 2010 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit to you the attached letter dated 9 November 2010 that I have received from Judge Patrick Robinson, President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (see annex).

In his letter, President Robinson requests that the term of office of Judge Uldis Kinis and Judge Kevin Parker be extended so that they may complete the *Gotovina et al.* trial and the *Đorđević* trial, respectively. President Robinson further requests that Judge Kinis be permitted to serve at the Tribunal beyond the cumulative period of three years stipulated under article 13 ter, paragraph 2, of the statute of the Tribunal.

Pursuant to Security Council resolution 1877 (2009) and General Assembly decision 63/426, the term of office of the two judges will expire on 31 December 2010. It is necessary to authorize the two judges to serve at the Tribunal beyond 31 December 2010 because, contrary to previous projections, the cases to which they are assigned will not be completed by the end of 2010. President Robinson attributes the delay in the *Gotovina et al.* trial to a number of factors, namely, extensive litigation regarding prosecution requests for production of documents by Croatia, the arrest and searches of members of the defence team in Croatia, and the simultaneous participation of two judges and legal support staff in another trial from the beginning of 2009. According to President Robinson, the *Đorđević* trial has been delayed by staffing problems and the involvement of two of the judges in other trials.

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It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I should be grateful if you would bring the letter from President Robinson to the attention of the members of the General Assembly and the members of the Security Council.

(*Signed*) **BAN** Ki-moon

Annex

Letter dated 9 November 2010 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General

I have the honour of referring to Security Council resolution 1877 (2009) of 7 July 2009, whereby the terms of office of the permanent and ad litem judges were extended by the Security Council until 31 December 2010, or upon the completion of the cases to which they were assigned, if sooner.

I am writing to request a brief extension of the terms of office of ad litem Judge Uldis Kinis (Latvia) in order to allow him to complete the *Gotovina et al.* trial and of permanent Judge Kevin Parker (Australia) to allow for the orderly completion of the *Đorđević* trial.

By the present letter, I wish to advise that, owing to unforeseen factors related to the scale and complexity of the case of *Gotovina et al.*, the delivery of the judgement is delayed approximately two months and it will not be rendered until March 2011. As you know, the case of *Prosecutor v. Ante Gotovina et al.* — with three accused — involves nine counts of crimes against humanity and violations of the laws or customs of war allegedly committed against the Serb population in 14 municipalities in the southern portion of the Krajina region in Croatia in 1995. This is the first trial before the Tribunal involving crimes allegedly committed against the Serb population in Croatia. The Chamber heard the final arguments on 30 August and 1 September 2010 and is currently preparing the final judgement. Throughout the trial, there has been extensive litigation regarding unfulfilled prosecution requests for production of documents by Croatia, and, in July 2010, the Chamber denied the prosecution's request for an order against Croatia in this respect. In December 2009, criminal investigations in Croatia led to arrests and searches of members of the Gotovina defence team, which created a series of challenges related to the fair and expeditious conduct of the proceedings. These matters have absorbed significant resources on the part of the parties and the Chamber. Finally, since the beginning of 2009, two of the judges and members of the legal support staff have been engaged in another case (Presiding Judge Orie and Judge Gwaunza on *Stanišić and Simatović*), which has allowed both trials to move forward, but which has also resulted in resources being diverted from the *Gotovina et al.* trial. The judgement is tentatively anticipated to be delivered in March 2011. Accordingly, it has become necessary to seek an extension of the terms of resolution 1877 (2009) in order to extend the terms of office of Judge Kinis so that he may complete his assignment to this case. Under the circumstances, I think it would be prudent for the term of office of Judge Kinis to be extended until the end of April 2011. It will also therefore be necessary to grant permission for Judge Kinis to serve at the Tribunal beyond the cumulative period of service provided for under article 13 ter, paragraph 2, of the statute of the Tribunal.

Judge Parker is currently the Presiding Judge in the *Đorđević* trial, which was scheduled to be completed at the end of 2010. You will recall that, by my letter of 28 May 2010, I notified you that Judge Parker was anticipated to complete his mandate within the time frame set out in Security Council resolution 1877 (2009). Unfortunately, I have been informed by Judge Parker that he is currently unable to guarantee the delivery of judgement in the *Đorđević* case by 31 December 2010.

This is because the original estimate made by Judge Parker of judgement delivery by December 2010 did not appreciate the amount of time that would be taken by the other two judges on the bench in the *Đorđević* case on other cases. One of those judges, Judge Flügge, presides over the *Tolimir* case, while the other, Judge Baird, sits on the *Karadžić* case. The commitment of these judges to these other cases has hindered the scheduling of deliberations, which has caused delays in judgement drafting. Further, the original estimate of completion by December 2010 was made by reference to a complement of five experienced staff members. Unfortunately, owing to staff attrition and the demands of other trials, the staff assigned to the Đorđević team has been depleted to just under two experienced staff, in addition to one new permanent staff member and one temporary staff member. The loss of experienced staff members has had a detrimental impact on the pace of the judgement drafting process. In these circumstances, while Judge Parker is taking all measures to complete the judgement in this case as expeditiously as possible, a completion date by 31 December 2010 cannot be guaranteed. Accordingly, it is requested that the Security Council extend the mandate of Judge Parker until the end of February 2011 to allow for the orderly completion of the *Đorđević* case. As I have previously advised, we will not be seeking a replacement for Judge Parker in accordance with the overall downsizing of the Tribunal in line with the completion strategy.

I should be grateful if these matters could be brought to the attention of the Security Council.

(*Signed*) Patrick **Robinson**
President